

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 337 Use of Force

SPONSOR(S): Scionti and others

TIED BILLS: IDEN./SIM. BILLS: SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u>7 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	<u></u>	<u>Cunningham</u>	<u>Havlicak</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 776, F.S., contains a variety of statutes that outline when a person may justifiably use force against another. These "justifiable use of force" defenses are commonly used in criminal prosecutions. Chapter 776, F.S., also contains statutes that preclude a person from using "justifiable use of force" defenses in a criminal prosecution.

Section 776.051, F.S., is a statute that precludes a person from using a "justifiable use of force" defense in a criminal prosecution if the person resists an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer. This statute also precludes a law enforcement officer from using a "justifiable use of force" defense if the officer used force during an arrest that he or she knew was unlawful. The Florida Supreme Court recently held that s. 776.051, F.S., only applies to arrest situations.

HB 337 expands s. 776.051, F.S., so that in addition to applying to arrest situations, it also applies to other lawful police-citizen encounters. Specifically, the bill provides that a person is not justified in using force "to obstruct with violence a law enforcement officer who is engaged in the lawful execution of a legal duty, regardless of whether a court later finds that the action of the law enforcement officer was unlawful, if the law enforcement officer was acting in good faith."

The bill also precludes a law enforcement officer from using a "justifiable use of force" defense if the officer used force during an arrest or during an execution of a legal duty that he or she knew was unlawful.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill expands s. 776.051, F.S., to preclude a person from using a “justifiable use of force” defense if they obstruct with violence a law enforcement officer who is engaged in the lawful execution of a legal duty.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 776, F.S., contains a variety of statutes that outline when a person may justifiably use force against another.<sup>1</sup> These “justifiable use of force” defenses are commonly used in criminal prosecutions (e.g. a person charged with battery may claim that the use of force [i.e. the battery] was justified because they were defending themselves). Chapter 776, F.S., also contains statutes that *preclude* a person from using “justifiable use of force” defenses in a criminal prosecution.<sup>2</sup>

Section 776.051, F.S., is a statute that *precludes* a person from using a “justifiable use of force” defense in a criminal prosecution. Specifically, the statute provides that “a person is *not* justified in using force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.”<sup>3</sup> Thus, if a person resists an arrest and is subsequently charged with “battery on a law enforcement officer<sup>4</sup>,” that person is precluded from using a “justifiable use of force” defense. Section 776.051, F.S., also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest that he or she knew was unlawful.

In recent years, Florida’s First and Fifth District Courts of Appeal issued conflicting opinions as to whether s. 776.051, F.S., applied only to arrest situations, or whether it also applied to other types of police-citizen encounters (e.g. searches). The Florida Supreme Court resolved this conflict in 2006 when they decided *Tillman v. State*.<sup>5</sup> In *Tillman*, the court held that s. 776.051, F.S., by its plain terms, applied only to arrest situations.<sup>6</sup> Thus, if a person hits a law enforcement officer during an *arrest* and is subsequently charged with “battery on a law enforcement officer,” that person may not use a “justifiable use of force” defense. In contrast, if that same person hits a law enforcement officer who is conducting a *search* and is subsequently charged with “battery on a law enforcement officer,” that person may use a “justifiable use of force” defense.

It should be noted that while the court in *Tillman* held that s. 776.051, F.S., applied only to arrest situations, the court commented that policy reasons may support extending the prohibition in s.

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<sup>1</sup> See e.g., s. 776.012, F.S., (A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force); s. 776.031, F.S., (A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.)

<sup>2</sup> See e.g., s. 776.041, F.S., (The justification described in the preceding sections of this chapter is not available to a person who is attempting to commit, committing, or escaping after the commission of, a forcible felony).

<sup>3</sup> This is true even if the arrest is technically illegal. See, *Jones v. State*, 570 So.2d 433 (Fla. 5<sup>th</sup> DCA 1990); *Wallace v. State*, 557 So.2d 212 (Fla. 2<sup>nd</sup> DCA 1990); *Delaney v. State*, 489 So.2d 891, (Fla. 1<sup>st</sup> DCA 1986).

<sup>4</sup> s. 784.07, F.S.

<sup>5</sup> 934 So.2d 1263 (Fla. 2006)

<sup>6</sup> *Id.*

776.051, F.S., beyond arrests, but that it was not the court's function to substitute its judgment for that of the legislature.<sup>7</sup>

**Effect of the Bill**

HB 337 expands s. 776.051, F.S., so that in addition to applying to arrest situations, it also applies to other lawful police-citizen encounters. Specifically, the bill provides that a person is not justified in using force "to obstruct with violence a law enforcement officer who is engaged in the lawful execution of a legal duty, regardless of whether a court later finds that the action of the law enforcement officer was unlawful, if the law enforcement officer was acting in good faith." Thus, under the provisions of the bill, if a person hits a law enforcement officer who is conducting a lawful *search* and is subsequently charged with "battery on a law enforcement officer," that person may *not* use a "justifiable use of force" defense.

The bill also precludes a law enforcement officer from using a "justifiable use of force" defense if the officer used force during an arrest or during an execution of a legal duty that he or she knew was unlawful.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 776.051, F.S., relating to use of force in resisting or making an arrest.

**Section 2.** This bill takes effect July 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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<sup>7</sup> *Id.* at 1269-1270.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Note: The following comments have been addressed by the amendment traveling with the bill.

There appears to be a typo on line 20 – the word “lawful” should be “law.”

Section 776.051, F.S, entitled “use of force in resisting or making an arrest,” currently provides that a person may not use a “justifiable use of force” defense if they resist a law enforcement officer. The bill adds language providing that a person may not use a “justifiable use of force” defense if they obstruct with violence a law enforcement officer. The word “obstruct” is a term found primarily in Chapter 843, F.S., entitled “obstructing justice.” It is unclear why the term “obstruct with violence” is used instead of the term “resist.”

As noted above, s. 776.052, FS., currently precludes a person from using a “justifiable use of force” defense if the person resists an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer. This is true even if the arrest is later held unlawful. The bill expands this preclusion to people who “obstruct with violence a law enforcement officer who is engaged in the lawful execution of a legal duty, regardless of whether a court later finds that the action of the law enforcement officer was unlawful.” It appears that the intent of the bill was to preclude a person from using a “justifiable use of force” defense even if the law enforcement officer’s “lawful execution of a legal duty” is later held to be unlawful. However, by placing the term “lawful” before the term “execution,” it would appear that the officer’s execution of a legal duty must be lawful, despite the subsequent language to the contrary. This could be resolved by deleting the term “lawful” from line 21.

As drafted, the bill addresses only one of the issues raised in the Florida Supreme Court’s decision in *Tillman v. State* (i.e. whether s. 776.051, F.S., applies only to arrest situations or to other types of police-citizen encounters). However, the court issued a concurring opinion relating to the elements of ss. 784.07, (battery on a law enforcement officer) and 843.01, F.S., (resisting an officer with violence), and noted that the legislature may want to examine those statutes in light of the court’s decision.

Both the “battery on an officer” statute and the “resisting” statute require that a law enforcement officer be lawfully performing his or her duties in order to prosecute a person. For example, if a person hits an officer who is conducting a search, that person may be charged with “battery on a law enforcement officer,” but could not be prosecuted if the search is later held to be unlawful. The court noted that “this may narrow the intended scope of protection for public officials further than actually intended and, thereby, undermine the very purpose of these statutes.” The court reviewed other similar state statutes

and commented that the majority of them did not use the narrow phrase “lawful performance,” but rather used a broader phrase such as “engaged in the execution of any official duty.”

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Homeland Security & Public Safety Committee adopted one amendment and reported the bill favorably as amended. The amendment address the issues raised in the bill analysis. Specifically, the amendment makes technical changes and provides that a person may not use a “justifiable use of force” defense if they resist (rather than “obstruct with violence”) a law enforcement officer who is engaged in the execution of a legal duty (rather the “lawful” execution of a legal duty).

The amendment also amends the “battery on a law enforcement officer” and the “resisting an officer with and without violence” statues to remove the requirement that the law enforcement officer be engaging in the lawful performance of his or her duties.